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TWO THEORIES OF CONSIDERATION.—

DEAR MR. EDITOR,—Will you permit me to correct two errors in my article on "Consideration" printed in the last number of the *Review*. The first is a misprint. In line 19 of page 31 "think itself" should be "promise itself."

The other error, I regret to say, is not a misprint. I should like, however, to substitute for so much of the sentence as follows the word "is" in line 23 of the same page, these words: "to find the consideration in the mere act of giving the promise requested in these cases, and yet to deny the quality of consideration to the same act in other cases." Professor Williston certainly did not fall into the same fallacy which he had detected in another. It is with great regret that I find myself unable to agree with my friend and colleague as to the essence of consideration. But it is doubly painful to discover that I did him the injustice of giving an erroneous reason for my dissent from his view. I hope that this correction may meet the eyes of all who happen to read my misconceived criticism.

JAMES BARR AMES.

JURY TRIAL IN THE DISTRICT OF COLUMBIA. — According to the common law of England, no verdict of a jury could be reviewed by another jury on appeal to a superior court. This rule was adopted in the American colonies, with the exception of New England and Georgia; at all events, it governs that ideal jury which our federal Constitution guarantees. The application of this principle to the courts of the justices of the peace of the District of Columbia has recently been determined by the Supreme Court of the United States in an able and learned opinion by Mr. Justice Gray. *Capital Traction Co.* v. *Hof*, 19 Sup. Ct. Rep. 580. These courts were established by Act of Congress, which continued their existence as under the laws of Maryland. Appeal was provided to the Supreme Court of the District, before a jury if desired. In 1823 the jus-

tice was authorized to summon a jury of twelve men to his assistance and herein arose the difficulty. The defendant in the present case was sued in a civil action before the justice of the peace. If the first proceedings were a trial by jury, then they could not be reviewed by a jury in the court above. But it appeared that the so-called jury of the justice's court was established by analogy with similar courts in New York; and it had become the recognized usage of these courts that the jury was no more than a body of referees, the judge having no authority, to direct as to the law or to set aside the verdicts. In the absence of such authority, there could be no true trial by jury, and so the court held.

So far the jury trial before the Supreme Court of the District would be regular. The next question was whether it would be unduly interfered with by the fact that a preliminary hearing had been held before the justice, — whether the defendant was entitled to a jury in the first instance. The case of *Callan* v. *Wilson*, 127 U. S. 540, had to be dealt with, where it was held that the defendant in a criminal prosecution for conspiracy could not be tried in a police court without a jury. The express ground of the decision was that the police court had no jurisdiction; but it was further said by way of dictum that the defendant was entitled to a jury before the proper court without any preliminary. That theory is distinguished in the present case; the court says the different considerations apply to the Seventh and Sixth Amendments, to criminal and to civil proceedings. In criminal prosecutions the prisoner is entitled to a "speedy trial," and his liberty is to be protected against undue process of law. This reasoning may differentiate the cases; if it does not, the theory of *Callan* v. *Wilson* should give way, for it seems to be based upon a narrow method of dealing with the constitutional guaranties. The decision of the principal case, at all events, is satisfactory; the provision for a jury trial before the appellate court would seem to give all the essential protection which the Constitution aimed to secure.

The opinion is also interesting as giving a hint of the probable attitude of the court in regard to the right of the inhabitants of our newly acquired islands to a jury trial. "It is beyond doubt at the present day that the provisions of the Constitution of the United States securing the right of trial by jury, whether in civil or in criminal cases, are applicable to the District of Columbia." Three cases are cited; *Callan* v. *Wilson*, *supra*, alone squarely decided the point, and the decision was not a fully considered one. At all events, the District of Columbia may be distinguished from territories generally. The remaining cases cited refer to other territories, — Iowa and Utah. *Webster* v. *Reid*, 11 How. 437; *Thompson* v. *Utah*, 170 U. S. 343. The Iowa case is based upon the Act of Congress which applied to Iowa the clauses of the Constitution; the Utah case had the same basis, although some dicta went further. See 12 HARVARD LAW REVIEW, 205. The point is not yet *res adjudicata* as to territories generally; but the court is showing no temper to reconsider its former dicta; and if the constitutional provisions are not applied to the Philippines, the result is likely to be accomplished only by distinguishing the Philippines from our formerly acquired territories.

WAR REVENUE ACT OF 1898.—The recent case of *Nicol* v. *Ames*, 19 Sup. Ct. Rep. 522, is notable since it passes upon an important clause of the War Revenue Act of 1898, but it seems to add no new point to the vexed